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Chairman: Mr. Wolfe ..... (Jamaica)

Contents

Agenda item 68: Elimination of racism and racial discrimination*

(a) Elimination of racism and racial discrimination

(b) Comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Agenda item 69: Right of peoples to self-determination*

* Items which the Committee has decided to consider together.

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The meeting was called to order at 10.20 a.m.

Agenda item 68: Elimination of racism and racial discrimination

(a) Elimination of racism and racial discrimination (A/62/306)

(b) Comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action (A/62/375 and 480)

Agenda item 69: Right of peoples to self-determination (A/62/184 and 301)

1. **Mr. Mokhibir** (Officer-in-Charge, New York Office of the Office of the High Commissioner for Human Rights) introduced the report of the Secretary-General on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance (A/62/480), which focused on information received from Member States on various measures undertaken towards the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action. While those initiatives constituted important progress in combating racism effectively, an increased number of communications from stakeholders would allow for a more comprehensive assessment of progress achieved and remaining challenges.

2. The report of the Secretary-General on the universal realization of the right of peoples to self-determination (A/62/184), submitted pursuant to General Assembly resolution 61/150, outlined developments emanating from the Human Rights Council's consideration of the question of self-determination, especially with regard to the human rights situation in the occupied Palestinian territories, the recommendations of the Commission of Inquiry on Lebanon established by the Council in August 2006, and the report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the rights of peoples to self-determination. It also contained a summary of recent concluding observations of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, based on their consideration of periodic reports submitted by States parties.

3. **Mr. Diène** (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance), introducing his report (A/62/306), said that the most serious manifestations of regression in combating racism and xenophobia were a resurgence of racist and xenophobic violence, in particular the shift from words to action, and the political normalization and democratic legitimization of racism and xenophobia resulting from the ability of political parties to apply racist and xenophobic platforms. A new intellectual legitimization of racism, xenophobia and intolerance was developing, as indicated by the growing number of so-called scientific or literary publications or public statements that, under the guise of protecting national identity and security, gave an ethnic or racial twist to social, economic or political problems. Two examples were recent remarks by James Watson, Nobel Prize laureate in medicine, regarding the intellectual inferiority of persons of African descent, and the speech by the President of France at the University of Dakar on 26 July 2007 in which he expressed the view that Africans had not fully been a part of history. That type of statement was at the origin of all forms of racism and genocide.

4. The criminalization of immigration and the approach to issues involving immigration, asylum, and the situation of foreigners and national, ethnic, religious and cultural minorities purely from a security standpoint targeted the main victims of racism, xenophobia and intolerance. In France, the recent bill to introduce DNA testing in processing of applications for family reunification was another illustration of the stigmatization of immigrants. The rise in defamation of religion and racial and religious hatred, anti-Semitism, Christianophobia and especially Islamophobia was another worrisome trend. Those tendencies reflected an isolationism stemming from the conflict between old national identities and increasingly multicultural societies, leading to the dominant idea of integration-assimilation, which denied the very existence of values and memories specific to national minorities and immigrants, and thus their contribution to the value system, history and national identity of their host country.

5. His report to the General Assembly as well as to the Human Rights Council also contained a number of recommendations for urgent action. Those that he particularly wished to stress included recognition of the central importance of political will in efforts to combat racist and xenophobic political platforms; renewed commitment to the implementation of the Durban Declaration and Programme of Action;

promotion of the link between the struggle against racism and xenophobia and the recognition and promotion of a democratic, egalitarian and interactive multiculturalism based on the related principles of recognition, respect and expression of ethnic, cultural and religious specificities and promotion of interaction and dialogue among communities; combating defamation of religions, especially Islam; and systematically countering incitement of racial and religious hatred through a balance between secularism and freedom of religion.

6. During his visit to the Baltic countries Estonia, Latvia and Lithuania in September 2007, he had noted that those countries had strong national identities and long histories, but had been victims of political and cultural oppression in the recent past. They were faced with a complex situation where the need to restore their national culture and language must be balanced with the need to respect the rights of national and linguistic minorities, especially the Russian minority, because of its association with the period of oppression. The Baltic countries were preparing for membership in the European Union. As they were also somewhat geographically isolated in Europe, they must also begin to prepare themselves for the migration of non-European peoples which had caused so much tension within societies in the rest of that continent.

7. He had visited the Dominican Republic in October 2007, along with the Independent Expert on minority issues. During their visit, they had noted that there was a contradiction between the views on racism and discrimination held by the authorities and those of the civil society and the communities concerned. The political and economic elite denied the existence of racial discrimination and the reality of racism within Dominican society, which had been reported by all minority groups. Factors of race and colour had contributed to the social structure of every society in the western hemisphere, due to the ongoing influence of colonialism and slavery, and the Dominican Republic was no exception. In its recent history, during the Trujillo regime, the official Government immigration policy had a racial component through the encouragement of white immigration and the exclusion of blacks.

8. He had also noted the economic, social and cultural marginalization of minority groups, for example the Haitian community: even persons of Haitian descent born in the Dominican Republic were subject to discriminatory practices regarding access to citizenship. His report to the Human Rights Council on the visit would recommend that the elites in Dominican society must recognize the existence of racism and replace it with democratic and egalitarian multiculturalism. Lastly, he pointed out that, in an unprecedented reaction to any of his visits to countries, three days after he and the Independent Expert had arrived, the Senate of the Dominican Republic had passed a resolution condemning their visit and characterizing it as an international conspiracy against the country. Even the Roman Catholic archbishop had denounced any inquiry into racism as irresponsible, and their activities had been vilified in the local press.

9. **Mr. Queiros** (Portugal), speaking on behalf of the European Union, asked if statistical data was available on the resurgence of racist and xenophobic violence that would help in deciding what urgent measures States must take to combat that trend. He would also like to hear more on how the international community could combat the democratic legitimization of racism and xenophobia. Finally, with regard to coordination between the Special Rapporteur and such European institutions as the European Parliament and the Agency for Fundamental Rights, he would be interested to know the next steps that were envisaged.

10. **Mr. Mantovani** (Italy) thanked the Special Rapporteur for his visit to Italy. The Government was determined to protect and promote all human rights, and a framework of guarantees had been enshrined in its Constitution. It had submitted a National Plan of Action on Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. As for the integration of immigrants, the Parliament was currently considering a citizenship bill and had recently adopted a "Charter of values of citizenship and integration" for the purpose of raising awareness of the rights and duties of immigrants in Italy. A number of agreements had been signed for the protection of freedom of religion, including one on the integration of the Muslim communities. Efforts had also been made to address the situation of the Roma and Sinti people, and an international conference on the subject would be held in January 2008.

11. The flow of foreigners entering Italy illegally was a growing concern, which had led to the implementation of a comprehensive law on asylum, naturally taking into account European Union

directives. As to the situation of illegal immigrants in Centres for Temporary Stay and Assistance, the Ministry of the Interior was committed to working on guidelines and strategies to improve the living conditions and management of the facilities for hosting illegal immigrants and asylum-seekers. He reaffirmed the willingness of the Italian authorities to continue cooperating with the Special Rapporteur and all other human rights mechanisms in a spirit of open, constructive and fruitful dialogue.

12. **Mr. Gottyaev** (Russian Federation) said that the Special Rapporteur had paid special attention to the problem of balancing freedom of speech and expression with the need to combat racist and xenophobic ideas. His delegation shared the view that it was unacceptable to use freedom of speech as an excuse for spreading racist ideologies. Rather than contributing to pluralism, it undermined respect for the rights of others. It also shared the concerns expressed at the political legitimization of racism and xenophobia. One of the worst forms of racism was neo-Nazism, and the Russian Federation intended to submit a draft resolution on combating that scourge.

13. **Mr. Israeli** (Israel) asked the Special Rapporteur, in view of the work of UNESCO in education, whether he was involved in or would consider becoming involved in work to address racism through school textbooks.

14. **Mr. Hagen** (United States of America) said that his Government found the term "defamation of religions" to be flawed and problematic. While it discouraged actions that were offensive to particular religious traditions, it did not believe that it should be illegal to express an opinion on a particular religion, including opinions that were highly critical. The United States was deeply concerned that the concept was used to justify torture, imprisonment, abuse and even execution of individuals and members of religious groups who did not subscribe to a particular "state" religion or wished to convert to another religion. That concept had also been incorporated into national legal systems with the chilling effect of halting public comment or dissent against political figures, and was being promoted at the international level to justify blasphemy laws in some countries. As the Special Rapporteur had explored the role of States in defamation issues, the United States would be interested to hear his thoughts on the role of States in protecting an individual's legitimate right to express opinions on religions and to dissent.

15. **Mr. Llanos** (Chile) said that his delegation agreed with the Special Rapporteur that inter-religious and intercultural dialogue must be promoted in order to promote respect for human rights and fundamental freedoms. It also supported the conclusions and recommendations contained in his report, in particular those concerning the compatibility and complementarity of freedom of expression and freedom of religion in combating racism. He asked how that complementarity could be promoted in practice.

16. **Mr. Alakhder** (Libyan Arab Jamahiriya) said that, in order to foster constructive dialogue instead of a clash of civilizations, his delegation felt that it was important to exclude extremists from both ends of the spectrum. It seemed to him that generalizations about races and religions were part of extremism. In recent years terrorism had come to be equated with Islam, but that was an inaccurate generalization; for example, neither Hitler nor Mussolini, two of the worst terrorists that the world had ever seen, had been Muslim. Freedom of speech should not pose a threat to the sovereignty of States and should not be used as an excuse to insult religious figures.

17. **Mr. Ke** (China) said that, despite the adoption of the Durban Declaration and Programme of Action by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001, racism and racial intolerance still prevailed. Referring to the Special Rapporteur's comments concerning the emergence of new forms of racism, he wondered what practical measures the international community could adopt to counter those new phenomena.

18. **Ms. Sánchez Salazar** (Mexico) said that the Special Rapporteur had addressed issues of particular significance for her country, given its multiculturalism, indigenous roots and role as a transit country for migrants. She was particularly concerned by the regression in the campaign against racism and agreed with the Special Rapporteur's recommendation that immigration issues should be approached in accordance with international standards on human rights, and not merely on the basis of security considerations. She wanted to know how the international community could better resolve issues related to migrants.

19. **Ms. Moreira** (Ecuador) said the Special Rapporteur's reference to the criminalization of immigration was extremely relevant. A few weeks ago, an Ecuadorian teenager had been attacked on the subway in Barcelona, demonstrating that the fight against racism was far from over. She hoped that the Spanish Government would not let the act go unpunished. She would like further recommendations from the Special Rapporteur on the way to address the issue of racism against migrants at the upcoming Durban Review Conference.

20. **Ms. Bowen** (Jamaica) said that the Caribbean Community (CARICOM) had recently commemorated the bicentennial anniversary of the abolition of the trans-Atlantic slave trade. She was very concerned about the rise in historical revisionism, in particular the attempt to question that trans-Atlantic slavery was a crime against humanity, on the grounds that that concept did not exist at the time. She wanted to know, firstly, how the United Nations could bridge that information gap and, secondly, what role the Special Rapporteur was assuming in preparations for the forthcoming Durban Review Conference.

21. **Mr. Alvarez** (Dominican Republic) said that the Special Rapporteur's statement to the Third Committee was biased. In his country, where 80 per cent of the population was of African descent, there could be no talk of racism. His Government had a policy of friendship towards Haiti and Haitians lived in harmony alongside Dominicans on the same island. He firmly rejected the accusation that there was racial discrimination in the Dominican Republic.

22. **Ms. González Pérez** (Cuba), sharing concerns expressed about the regression in the campaign against racism, asked the Special Rapporteur how he envisaged the review process of the Durban Declaration that would culminate in the Durban Review Conference.

23. **Mr. Diène** (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) said that racism still remained a very serious problem. No sooner had the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance taken place, than there was immediately a campaign to discredit it. Particularly serious was the fact that, statistically, there was a resurgence in racist violence. He gave examples of racist attacks, both physical and verbal, that had occurred in Belgium, the Russian Federation and Germany, and reiterated his appeal for the setting up of a centre within OHCHR to monitor cases of racism, similar to the European Union Monitoring Centre on Racism and Xenophobia in Vienna.

24. A second major problem was the political and intellectual legitimization of racism. Political parties everywhere had found that exploiting sensitive issues earned them votes, enabling them to form alliances within Governments and have their racist programmes implemented democratically. The Third Committee should be concerned by the statement of Dr. James Watson, the Nobel Prize laureate who had claimed that African people were less intelligent than white people. The very fact that he had been able to pronounce those words in public was alarming and demonstrated the increase in racism among elites.

25. A French journalist had even gone so far as to say that underdevelopment in Africa was the fault of the Africans themselves, and that African men should be sterilized. His words were bad enough, but the fact that he had kept his job with one of the main French television channels was truly shocking. The President of France himself had been guilty of the worst type of racial stereotype by stating, in a speech at the University in Dakar, that Africans had not fully been a part of history. Speeches of that kind only led to racism and genocide.

26. The political will to combat racism, of such crucial importance, was sorely lacking at the moment. Racism was similar to an iceberg: there was an underlying danger that was not immediately visible. Legal strategies might appear to address the problem; but equally important was the need to identify and eradicate the root causes of racism that lay just below the surface, because it was precisely those deep-rooted prejudices that led people to make racist statements and continue to believe in stereotypes. Legal strategies, based on the Durban Declaration, should therefore be accompanied by efforts to change cultural misconceptions.

27. Freedom of expression was vital and should be upheld by international agreements. However, that freedom of expression should not lead to racial discrimination or hatred, and the media had a great responsibility in that respect. There was no need to adopt new agreements but merely to apply existing ones. He worked closely with the United Nations Educational, Scientific and Cultural Organization

(UNESCO) in the area of education, but education should not be considered a mantra. Racist tendencies in some European countries could not be attributed to illiteracy but rather to the content of education programmes, to which increasing attention should be paid.

28. **Mr. Fieschi** (France) said that the Special Rapporteur had referred twice to his country in an unacceptable way. Being profoundly democratic, France had no objection to public statements being discussed, even those of the highest authorities, provided that they were not distorted or biased. The Special Rapporteur had implied that the President of France's speech in Dakar had sought to legitimize racism, pointing out that speeches of that kind contributed to racism and genocide. Those accusations were not only unfounded but totally irresponsible.

29. Since coming to power, the President had reaffirmed on several occasions that combating racism and xenophobia was one of his major priorities. With respect to the recent bill concerning DNA testing for those requesting family reunion, that measure would be entirely voluntary. It would allow candidates to prove their relationship with their families when they did not have the necessary identity papers, and be backed up by all the necessary legal guarantees. His country had, unlike many others, always welcomed successive waves of migrants from all over the world and would continue to do so.

30. **Ms. Romulus** (Haiti) said that her Government now had excellent relations with the Government of the Dominican Republic and that both were working together to solve the problem of discrimination.

31. **Mr. Diène** (Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) said that with all due respect to a head of State, the President of France's comments to a group of academics had been deeply wounding and had had a profound impact; they had been taken up by many racist groups to promote their own goals. As long as he was Special Rapporteur, he would continue to denounce anyone who incited racism, whatever his or her position.

32. Taking note of the statement by the representative of Haiti that her Government was cooperating with the Government of the Dominican Republic, he recalled that his visit to that country had been viewed by its authorities as a global conspiracy. The Dominican Republic might not be racist as a whole, but racism existed there, as it did everywhere in the world, and there was no point denying it. One of the main problems in that country was that its elite categorically refused to acknowledge its existence. He congratulated the Permanent Council of the Organization of American States for examining the possibility of drafting a future Inter-American Convention against racism and all forms of discrimination and intolerance. The fact that a Convention against racism was being envisaged was proof that the problem was very much alive.

33. **Mr. Gómez del Prado** (Chairperson of the Working Group on the use of mercenaries as a means of violating human rights impeding the exercise of the right of peoples to self-determination) said that the establishment of the Working Group, which reinforced the sole existing mandate on the subject of mercenaries and their activities, had promoted the ratification of the 1989 International Convention against the Recruitment, Use, Financing and Training of Mercenaries, which already had 30 State parties. In contrast with main human rights instruments, the Convention had not established a treaty body, and the Working Group, as the only mechanism within the United Nations that dealt with mercenarism, attempted to address that gap by monitoring and follow-up activities in order to bring about universal adherence to the Convention.

34. The Working Group would hold a regional consultation with Latin American and Caribbean countries, organized by the Office of the High Commissioner for Human Rights, in Panama City on 17-18 December to discuss the impact on human rights of the activities of military and private security companies, the role of the State as holder of the monopoly on the use of force, and the additional regulations and controls needed at the international level. In order to fulfil its mandate, the Group had developed and integrated into its work a system of individual communications that enabled it to study allegations of possible human rights violations. Over the previous two years, communications had been sent to several Governments to address allegations received. The most recent communications were related to the killings allegedly perpetrated by military and private security companies in September and October of that year in Baghdad, Iraq.

35. The Working Group mandate benefited from the experience of five independent experts from different

legal and political systems. That diversity was creating awareness in the geopolitical regions to which each expert belonged, and each expert promoted in his or her respective region the different dimensions of the mandate through conferences, meetings, seminars, and consultations; the creation of academic networks; and contacts with civil society and the mass media. The Group's work had an impact not only on international public opinion but also on official documents, such as the one issued by the Congressional Research Service of the United States Congress, which devoted a special section to its activities.

36. The specificity of the mandate touched upon many characteristics of the new concept of human security, concerning the right of human beings and peoples to live in a safe and healthy environment and to receive protection against illegitimate acts of violence, whether of State or non-State origin. Further, the mandate took into account victims of human rights violations as well as individuals violating human rights, thus complementing other special procedures mandates that addressed the full range of human rights. The Working Group examined the possible human rights violations that might have been committed by mercenaries or people recruited by private security companies in armed conflict or post-conflict situations. It also examined the abuses and possible violations committed by those private security companies against the contracted private guards, who were often in vulnerable situations, and against those whose fundamental rights were violated.

37. The Working Group had received information indicating that often the guards working for private security companies, operating in situations of armed conflict, such as in Iraq, acted indiscriminately, shooting and killing or hurting civilians whom they considered to be threats. The killings of 16 September 2007 were one of many such incidents in Iraq in the four years since private companies had begun to operate in that country. The new forms of mercenarism, in which "traditional" mercenaries were being absorbed by private security companies, indicated that the military and private security industry for lucrative gain was flourishing. The Group had pointed out to States that it was their duty, in accordance with international law, domestic laws and the Charter of the United Nations, to respect human rights, public security and the rule of law, whether it was done directly or through private security. Further, the Group had alerted the authorities of the countries from which guards were recruited about the danger of war crimes being committed. The Group encouraged those countries to accede to the Convention if they had not done so and to adopt the necessary measures to avoid the recruitment of mercenaries.

38. Visits to Chile, Ecuador, Fiji, Honduras and Peru had allowed the Group to study the emerging trends in mercenarism and the activities of private military security companies and their impact on the enjoyment of human rights. The information obtained indicated that there had been contractual irregularities, poor working conditions, incomplete salary payments, mistreatment, isolation and lack of attention to basic needs such as health and hygiene. Though hired as security guards, individuals had received military training in the United States, Iraq or a third country and had ended up performing functions not provided for in their contracts.

39. The contracts included terms closely related to those stipulated in the 1989 Convention. Independent contractors from the countries visited had been recruited abroad and motivated by material gain to work, according to contractual clauses, in countries in a state of war where occupation forces and pockets of resistance existed. If attacked, they could become combatants in an armed conflict at any time, in accordance with their contracts, in an atmosphere of high danger and risk for their security and/or personal integrity.

40. Some of the recruited guards who had been in Iraq had informed the Working Group that they had been heavily armed, sometimes with weapons prohibited by international laws of war, and had responded to every attack by the insurgency, using excessive force indiscriminately and killing civilians on numerous occasions. That indicated that they had been prepared to take part in the hostilities and that a fine line separated passive and active combat in armed conflict or post-conflict situations. Most recruits were not nationals or residents of one of the parties to the conflict, and were not military personnel or civilians.

41. Contracting companies admitted to working directly for the United States Department of State in conducting protection activities in conflict or post-conflict zones. They then subcontracted to other companies abroad that recruited ex-military and police staff from developing companies, and the type of

contract was confidential. Contractual clauses forced the recruited individuals to relinquish important rights, such as the right to jurisdiction in their national courts, and the contracts indicated that they were recruited as security guards but were trained and armed for a conflict. In general, they signed the contracts after leaving their respective countries. In Iraq, over 11,000 casualties were reported among private guards and independent contractors. According to information received, it would be extremely difficult for relatives of those killed or injured to obtain compensation based on the insurance policies covering them at the time of recruitment.

42. The outsourcing of military functions and the provision of military and security services by transnational companies was leading to the privatization of war. Serious political, legal and human rights problems were posed by the use of force by non-State actors and the lack of transparency and oversight with which they operated. The monopoly of the use of force had been the basis of national sovereignty for centuries, and it was also the basis of the collective security system embodied in the Charter of the United Nations. In the questionnaire sent out to Member States in order to implement General Assembly resolution 61/151, the Working Group asked whether they had adopted measures to regulate the outsourcing of functions traditionally carried out by members of the armed forces and what functions should not be carried out by the private sector.

43. The use of independent contractors by private security companies to operate in armed conflict or post-conflict situations represented disturbing new manifestations of mercenarism in the twenty-first century. The Group recommended that States should expressly prohibit the intervention of military and private security companies in internal or international armed action that intended to destabilize a constitutional regime. As States devastated by war faced considerable difficulties in regulating such companies, the responsibility for doing so lay mainly with the States in which companies exporting military and security services were registered. The Group called upon such States not to grant immunity to the personnel and to investigate and prosecute private security guards who had perpetrated crimes and human rights violations in Iraq or elsewhere.

44. **Ms. Barletta de Nottebohm** (Panama) said that Panama looked forward to hosting a regional round table on the use of mercenaries and hoped that other regions would follow suit. She thanked the Office of the High Commissioner for Human Rights (OHCHR) for its support in promoting the initiative.

45. **Ms. Moreira** (Ecuador) said that, in implementation of the recommendations of the Working Group following its field mission to Ecuador, her Government had launched a comprehensive investigation into private companies recruiting mercenaries. It would report back to the Working Group in due course.

46. **Ms. Petersen** (Bolivarian Republic of Venezuela) asked whether the Working Group had reached an opinion on the legal qualification of deaths caused by private actors in armed conflict. Her delegation was concerned that new modalities of mercenary-related activities were emerging, with foreign companies providing security services that could result in human rights violations and individuals working for those companies not accountable to States. The Working Group should further address the issue of impunity and develop a definition of mercenaries that covered acts of transnational crime, such as trafficking in persons or narcotic drugs. The trend towards the privatization of war was a matter of serious concern, as was the involvement of mercenaries in the training of foreign armed forces. Not only did that phenomenon constitute a violation of human rights and the right to self-determination, but it also had the potential to incite civil conflict.

47. **Mr. Hagen** (United States of America) said that his Government demanded high standards and professionalism from its security contractors in Iraq, including prior experience, strict vetting, pre-deployment training and in-country supervision. Standards of conduct and demeanour were written into the companies' contracts, as were mission operational guidelines. Use of force by contractors was allowed only when absolutely necessary, and in those rare cases where it was used, embassy officials conducted a review to ensure that the proper procedures had been followed. His Government also cooperated regularly with the Iraqi authorities in such cases. The events of 16 September were being investigated by the Federal Bureau of Investigation (FBI) and a joint Iraq/United States Government Commission of Inquiry, and the Secretary of State's Panel on Personal Protective Services in Iraq had undertaken a comprehensive review of security practices for United States diplomats

in Iraq, resulting in the immediate implementation of a number of recommendations.

48. **Ms. Tincopa** (Peru) said that her Government was in the process of implementing the Working Group's recommendations arising from its field mission to Peru, including with regard to the alignment of national legislation with the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. She asked why there was such a low level of accession to and ratification of that instrument and why there were not more tools available at the global level to control the outsourcing of functions involving the use of violence.

49. **Mr. Goltyaev** (Russian Federation) welcomed the report of the Working Group on the use of mercenaries (A/62/301) and expressed support for its conclusions and recommendations. There was indeed a need for a proper normative basis to regulate the activities of private military and security companies. It was particularly vital to discuss the fundamental question of the role of the State as holder of the monopoly on the use of force. Regrettably, the trend towards the privatization of war was causing some Governments to neglect their responsibilities under international human rights and humanitarian law. The existence of provisions in national legislation granting immunity to private military and security company personnel could easily result in de facto impunity, a situation that seemed to suit certain entities and States.

50. There was also a need to draw a clear distinction between companies providing security services and those who recruited, trained, hired or sponsored mercenaries to perform military functions, even if it suited some States for that distinction to remain blurred. States that used private military or security services should incur responsibility for human rights violations committed by their personnel, especially if those companies were empowered to exercise elements of governmental authority or were acting under governmental direction or control.

51. In studying the human rights aspect of the issue, attention should continue to be paid to the responsibility of mercenaries as non-State actors. The efforts of the Working Group would help shift the positions of those who continued to maintain that human rights could be violated only by States or official representatives. Close attention should also be paid to the recruitment of specific categories of individuals to perform mercenary-related activities, including from a human rights point of view, especially former soldiers and ex-policemen from States with particular social and economic environments. Lastly, he reiterated his delegation's support for the work of the Working Group.

52. **Mr. Llanos** (Chile) said that his country was a strong supporter of the work of the special procedures mandate holders. For that reason, his Government had cooperated fully with the Working Group's request for an invitation and subsequent visit to his country. Nevertheless, special procedures should be limited to the mandate granted to them by the body that established them. With regard to the Working Group on mercenaries, its mandate, set forth in Commission on Human Rights resolution 2005/2, made no mention of the activities of private companies operating in the national sphere. For that reason, his delegation considered that the question of so-called violations of the human rights of indigenous communities committed by security guards hired by forestry companies was beyond the scope of the mandate.

53. **Mr. Alakhder** (Libyan Arab Jamahiriya) said that the Chairperson of the Working Group should describe what tool might best be suited to regulating the activities of private security companies.

54. **Ms. González** (Cuba) said that her delegation would be interested to learn what progress the Working Group had made in studying new forms of mercenary-related activities. It also wondered whether the regional round table to be held in Panama was part of the efforts of OHCHR to prevent the use of mercenaries as a means of impeding the exercise of the right of peoples to self-determination.

55. **Ms. Cerna** (Honduras), echoing previous speakers, expressed appreciation for the report (A/62/301). Her Government was in the process of implementing the recommendations made by the Working Group following its visit to Honduras.

56. **Mr. Gómez del Prado** (Chairperson of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination), responding to the questions posed, said that there was little or no regulation of private security companies even at the national level. A priority task of the Working Group was thus to examine existing national regulatory frameworks. The tool best suited to regulating

mercenary-related activities was the International Convention against the Recruitment, Use, Financing and Training of Mercenaries, the only instrument of its kind, ratified as yet by only 30 States. The goal was universal accession. It was difficult, however, to identify an individual as a mercenary, since the definition of "mercenary" in article 1 of the International Convention comprised five elements.

57. Private security companies profited from the legal vacuum. Unlike traditional, clandestine mercenary groups, such companies were legally regulated and had a code of conduct, which was generally not respected. He thanked the representative of the United States for outlining measures taken by his Government to ensure the accountability of private security companies operating in Iraq. In 2004, the High Commissioner for Human Rights had raised the question of what legal regime applied to an estimated 20,000 private security personnel deployed in Iraq and the Government of the United States had commented that they were subject to criminal jurisdiction in United States Federal Courts. However, Paul Bremer, chief of the former Coalition Provisional Authority, had granted complete immunity to security contractors under the infamous "Decree 17". There had been many cases of indiscriminate shootings by security contractors, documented, inter alia, in the *Washington Post*. More regulation was thus needed to cover that grey area.

58. The Working Group had appealed to Member States to report on the extent to which they had privatized the use of force. It had also recommended that regional round tables be organized with the participation of private security companies and non-governmental organizations (NGOs), with a view to achieving a general consensus for all regions to supplement the International Convention. An optional protocol might also be considered.

59. **Ms. Mtshali** (Vice-Chairperson of the Preparatory Committee for the Durban Review Conference), introducing the report of the Human Rights Council on the preparations for the Durban Review Conference (A/62/375), said that the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban in 2001, had moved forward the global agenda for the advancement of the rights of the most vulnerable. It had focused on one of the most pernicious expressions of the non-respect of human rights that affected the lives of billions of people. Through the Durban Declaration and Programme of Action, the international community had reaffirmed that cultural diversity enriched societies and that no country was free from racism.

60. For the first time, the international community had openly confronted the wrongs of the past, recognizing that colonialism and slavery had led to racism, racial discrimination and related intolerance and that those historic victims continued to be victims of that legacy. The Conference had also recognized the increase in anti-Semitism and Islamophobia in various parts of the world. Through the outcome documents, the international community had challenged the historical, socio-economic and political structures that had enabled racial discrimination to persist. Although six years had passed, racism and discrimination continued to be a root cause of numerous human rights violations. The 2009 Durban Review Conference would unite the international community against that social evil and remind Member States of their commitments.

61. Document A/62/375 contained the report of the Preparatory Committee on its first session. The Preparatory Committee had reached consensus on a number of issues, including the objectives of the Review Conference, sources of funding and preparatory activities. Those decisions were detailed in the annexes to the document. The High Commissioner for Human Rights had been designated Secretary-General of the Review Conference and the venue would be decided at a later date.

62. **Mr. Queirós** (Portugal), speaking on behalf of the European Union; the candidate countries Croatia and the former Yugoslav Republic of Macedonia; the stabilization and association process countries and potential candidates Albania, Bosnia and Herzegovina, Montenegro and Serbia; and, in addition, Armenia, Georgia, Moldova, and Ukraine, reiterated the European Union's full commitment to the fight against racism, racial discrimination, xenophobia and related intolerance. In addition to National Action Plans implemented in accordance with the Durban Declaration and Programme of Action, the European Union had its own regional strategy to combat racism. Directives on racial equality and on employment equality had entered into force in 2004 and were applicable in all Member States, addressing discrimination on the grounds of race, ethnic origin, religion, disability, age and sexual orientation. The

European Commission had set up a network of legal experts to monitor the implementation of the directive on racial equality. Further, a framework decision on racism and xenophobia had been enacted the previous April, criminalizing acts of racism and xenophobia throughout the European Union membership and preventing impunity for hate crimes.

63. It was counterproductive to polarize and politicize the question of racism, to use it to target particular regions of the world or to establish a hierarchy between victims. The plight of all victims must be addressed equally, and all States must show political will to recognize the existence of racism and to work towards its elimination. He urged all States to ratify the International Convention on the Elimination of all Forms of Racial Discrimination, the implementation of which was fundamental to the success of the global fight against racism. The Committee on the Elimination of Racial Discrimination had demonstrated the relevance of the Convention in addressing new forms of discrimination, xenophobia and intolerance.

64. Another cornerstone of the global fight against racial discrimination was the Durban Declaration and Programme of Action, and the European Union had participated actively in the negotiations at the 2001 Durban World Conference and agreed on the outcome document. Under resolution 61/149, the General Assembly had decided to convene a review conference on the implementation of the Durban Declaration and Programme of Action in 2009. The European Union's understanding of that resolution was that the review would be conducted at a high-level General Assembly meeting and would focus on the implementation of the Durban Declaration and Programme of Action, without any reopening consideration of that document, and that its preparation by the Human Rights Council would not entail the creation of new mechanisms.

65. The European Union was grateful for the flexibility then shown by the Group of 77 that allowed for a broad consensus on that resolution, and had repeatedly affirmed that the international follow-up of the Durban Declaration and Programme of Action, the major added value of which was its universality, must be done through an inclusive framework that ensured a broad consensus. That was why the European Union had been forced to vote against two draft resolutions presented at the Human Rights Council that had contradicted the spirit of compromise of the New York decision. Nevertheless, the European Union had participated constructively in the organizational session of the Review Conference's preparatory committee in Geneva the previous August, and adoption by consensus was achieved on 15 decisions, including the objectives of the Review Conference.

66. Less than one month after that compromise, however, three drafts had been submitted at the sixth session of the Human Rights Council that were not in line with the compromises reached on the objectives of the Review Conference, and again the European Union had opposed those draft resolutions because it had remained committed to the compromises achieved by the Preparatory Committee. He wondered whether reaching a compromise was worth the efforts made by all delegations if that compromise could be undermined so easily, and whether some of the main players in the negotiations were genuinely interested in ensuring a broad and inclusive consensus for the follow-up of the Durban process. The fight against racism was too important to be used as a political tool and must be conducted on the basis of the broadest consensus possible.

67. The underlying question remained whether the Review Conference should focus on the implementation of the Durban Declaration and Programme of Action or on issues outside of its framework. Focusing on the implementation of the Durban Declaration and Programme of Action could make that implementation more effective and better coordinated among the international community. However, by focusing on other issues, the Review Conference would dilute the progress made since 2001, undermine the broad consensus that had been reached on the Declaration and Programme of Action and weaken the global fight against racism. He urged all States to remain focused on the common task as set by the General Assembly.

68. Another controversial issue was the eventual elaboration of complementary standards to the Convention. The European Union was aware that such elaboration was a part of the agreement reached in Durban and was therefore open to consider it further. However, the existing normative structure must be fully implemented and further explored in order to address current challenges. New standards should be elaborated only if there was a proven need and a broad consensus for doing so, as they aimed to be universal; and eventual new standards must expand rather than

hinder the promotion and protection of human rights. He expressed the European Union's concern that the process of elaboration of complementary standards was moving in a direction that could hinder the promotion and protection of human rights by shifting from the protection of the rights of individuals to the protection of ideas or concepts, exactly the opposite of what bodies like the Human Rights Council should do, in accordance with their mandates.

69. Diluting the strong universal consensus on the abhorrence of racism by introducing controversial questions into the debate that were unrelated to the fight against racism would distract the international community from that common endeavour. The rise in particular forms of discrimination was distressing and must be addressed by the international community, but in the context of the Durban Declaration and Programme of Action, the international community had found a universal and broadly consensual strategy to combat racism, one that should not be undermined.

70. **Ms. Alam** (Pakistan), speaking on behalf of the Group of 77 and China, noted with satisfaction that Governments had taken various important steps at the national level to combat racism, racial discrimination, xenophobia and related intolerance. All Member States should implement the Special Rapporteur's recommendations as set forth in his report, which listed an alarming number of contemporary forms of racism.

71. The upsurge in intolerance following the events of 11 September 2001 was a worrying development, and it was regrettable that the fight against terrorism had been equated with Islam, manifesting itself in new forms of discrimination and xenophobia against Muslims and Arabs. Religious intolerance had been masqueraded as freedom of expression and, although that freedom was a valuable component of a democratic society, its exercise should not infringe on the rights of others. The Group of 77 and China, therefore, called upon the international community to make all efforts to combat defamation of religions.

72. They also welcomed the recent decision by the Human Rights Council to start the process of drafting complementary standards to the International Convention on the Elimination of all Forms of Racial Discrimination in the immediate future. It was vital to enhance the United Nations protection regime for the victims of racism. Lastly, the Group of 77 and China welcomed the General Assembly's decision to convene the Durban Review Conference and called upon all the regional groups to organize their own preparatory conferences to contribute towards enriching the Conference's outcome document. The world could not stand by while racism and its attendant ills continued unabated, and the Durban commitments provided an action plan to combat those scourges.

The meeting rose at 1 p.m.